

Date Issued: February 1, 1982 (AGO 82-5)

Requested by: Daryl J. Kosiak, Assistant State's Attorney
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- QUESTION PRESENTED -

Whether, upon the filing of a Petition for Dissolution of Marriage under chapter 14-06.1, N.D.C.C., a clerk of district court may charge the petitioner a fifteen dollar filing fee imposed by section 11-17-04, N.D.C.C., in addition to the twenty dollar fee assessment imposed by section 14-06.1-15, N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the filing fee imposed by section 11-17-04, N.D.C.C., and the fee imposed by section 14-06.1-15, N.D.C.C., are requiring the clerk of the district court to collect a fee of thirty-five dollars from the petitioner upon the filing of a Petition for Dissolution of Marriage under chapter 14-06.1, N.D.C.C.

- ANALYSIS -

Section 1-02-07, N.D.C.C., states, in part:

1-02-07. PARTICULAR CONTROLS GENERAL. Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the two shall be construed, if possible, so that effect may be given to both provisions . . .

The legislative history behind section 11-17-04 and chapter 14-06, N.D.C.C., makes it clear that the Legislature did not intend that the twenty dollar fee assessment imposed by section 14-06.1-15, N.D.C.C., upon the filing of the Petition for Dissolution of Marriage should replace the fifteen dollar fee imposed for the filing of an action in accordance with section 11-17-04, N.D.C.C.

Section 11-17-04, N.D.C.C., which imposes a fifteen dollar fee for the filing of an action evolved from Session Laws 1899, Chapter 64 which established and imposed specific fees to be charged by the clerk of the district court. Among these fees were fees to be charged to the petitioner upon the filing of actions. The fees were imposed in order to reimburse the counties for salaries incurred as a result of services rendered by the clerk of court in connection with the action. Session Laws 1899, Chapter 64 provided that fees collected by the clerks were to be deposited with the County Auditor and to be credited to a special salary fund. Fees collected in excess of the amount required to reimburse the county for salaries were to be credited to the general fund of the county.

Although there have been several changes since then in the amount of fees to be charged by the clerks of court, the Legislature has not indicated any intent to change the statutory

plan by which fees charged by the clerks of court for their services are to be used to reimburse counties for expenses they incur in connection with the services rendered by the clerks of court as well as to meet their other expenses. See sections 11-17-05 and 11-10-14, N.D.C.C.

The purpose of the fee assessed in accordance with section 14-06.1-15, N.D.C.C., upon the filing of a Petition for Dissolution of Marriage is made clear by the legislative history behind this statute. This twenty dollar fee was imposed in order to fund the Displaced Homemaker Program established by the Legislature. There is no indication that the twenty dollar fee imposed by section 14-06.1-15, N.D.C.C., was intended to replace the fifteen dollar filing fee imposed by section 11-17-05, N.D.C.C.

In order to give effect to both statutory provisions, it is my opinion that the clerks of the district court should charge a thirty-five dollar fee to a petitioner filing a Petition for Dissolution of Marriage. Fifteen dollars of this fee should be treated in accordance with the provisions of sections 11-17-05 and 11-10-14, N.D.C.C., while the remaining twenty dollars should be attributable to section 14-06.1-15, N.D.C.C., and should be paid to the State Treasurer for deposit in the displaced homemaker account.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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